

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
Plaintiff,

v.

DIANGELO JOHNSON
Defendant.

Case No.: 12cr0623-LAB
17cr1213-LAB

**ORDER DENYING MOTION FOR
REDUCTION OF SENTENCE
[12cr0623-Dkt. 160; 17cr1213-
Dkt. 59]¹**

In 2017, Diangelo Keith Johnson (“Johnson”) was convicted in case number 17cr1213-LAB of Felon in Possession of a Firearm and Criminal Forfeiture in violation of 18 U.S.C. §§ 922(g)(1); 28 U.S.C. § 2461(c). The Court imposed a total sentence of 90 months imprisonment followed by 3 years of supervised release. He was also sentenced in case 12cr623-LAB to 12 months imprisonment for a supervised release violation, to run consecutively to 17cr1213-LAB. His projected release date is approximately June 6, 2024. (Dkt. 59 at 2).

Johnson moves for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), which permits a court to modify a defendant’s term of imprisonment if it concludes that “extraordinary and compelling” reasons merit a reduction after considering the

¹All docket citations are to 17cr1213-LAB unless otherwise noted.

1 factors presented in 18 U.S.C. § 3553(a). Specifically, he requests the Court
2 reduce his sentence to time served because he has a seizure disorder that he
3 reports is getting progressively worse and causing him to lose his memory. (Dkt. 59
4 at 1). He also reports “there is a decline in his overall health” and “the current
5 pandemic is making his condition significantly worse.” (*Id.* at 1). Lastly, he claims
6 that because of his ongoing seizure disorder, he has increased susceptibility to
7 COVID-19. (*Id.* at 3).

8 The Government opposes Johnson’s motion, arguing it should be denied
9 because he has refused to get vaccinated. The Government also opposes the
10 motion because Johnson has a lengthy criminal history, including several firearms
11 violations, and early release would be inconsistent with the 18 U.S.C. § 3553(a)
12 factors. (Dkt. 64 at 1). The Government points out that “BOP [the Federal Bureau
13 of Prisons] is still operating under a modified operations plan designed to maximize
14 the safety of the inmates in its custody” and that Johnson has refused vaccination
15 at least twice despite the BOP making COVID-19 vaccines “universally available
16 to every employee and inmate in every BOP institution.” (*Id.* at 2). Regarding the
17 § 3553(a) factors, the Government argues “Defendant’s history of illegal firearm
18 possession, violent offenses, drug offenses, and history of ignoring Court orders
19 makes him dangerous to the community....” (*Id.* at 22).

20 A review of Johnson’s medical records supports the Government’s argument
21 that he has refused the Covid-19 vaccine more than once, and Johnson doesn’t
22 contradict that.² (Dkt. 66). His medical records also establish that he has not
23 complied with his prescribed anti-seizure medication regimen. (*Id.*). There are
24 multiple instances noting his refusal to take prescribed medication. (*Id.*). This
25 evidence undermines Johnson’s allegations that his “seizures are getting
26

27 ² The Government submitted an electronic copy of Johnson’s medical records
28 directly to chambers accompanied by a motion to seal which was granted on
February 11, 2022. (Dkt. 65 and 66).

1 progressively worse” because of the pandemic or that the modified programming
 2 due to COVID-19 “makes it likely that he cannot care for his medical needs.”
 3 (Dkt. 59 at 5).

4 Several courts in this Circuit have held that “an inmate’s refusal to receive a
 5 COVID-19 vaccination undercuts that inmate’s assertion of extraordinary and
 6 compelling circumstances justifying compassionate release.” *United States v.*
 7 *Joseph*, No. 06cr00080, 2021 WL 5122355 at *5 (D. Hawai’i. November 3, 2021);
 8 *see also United States v. Hernandez*, No. 19cr02750-BAS-1, 2021 WL 5052970
 9 (“Mr. Hernandez could reduce his risk from COVID-19 if he wanted to accept the
 10 vaccine that is being offered by the BOP.”). And both the Sixth and Seventh
 11 Circuits have held that “a defendant’s incarceration during the COVID-19
 12 pandemic--when the defendant has access to the vaccine--does not present an
 13 ‘extraordinary and compelling reason’ warranting a sentence reduction.” *United*
 14 *States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021); *see also United States v.*
 15 *Broadfield*, 5 F.4th 801, 802-803 (7th Cir. 2021) (“[A] prisoner who remains at
 16 elevated risk because he has declined to be vaccinated cannot plausibly
 17 characterize that risk as an “extraordinary and compelling” justification for release.
 18 The risk is self-incurred.”).

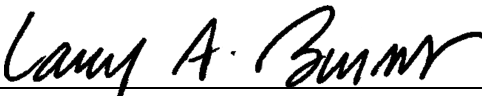
19 The Court concludes that Johnson hasn’t established that the BOP is unable
 20 to effectively safeguard his health during the remainder of his sentence. Currently,
 21 only fourteen inmates have an active COVID-19 infection in the facility in which
 22 Johnson is housed. Bureau of Prisons, BOP: COVID-19. Update,
 23 <https://www.bop.gov/coronavirus> (last accessed February 11, 2022). These
 24 institutional circumstances mitigate the risk that he will contract COVID-19 despite
 25 being unvaccinated. Johnson has not demonstrated “extraordinary and compelling
 26 reasons” justifying compassionate release.

27 The Court likewise concludes the § 3553(a) factors continue to support
 28 maintaining Johnson’s original sentence. Both cases for which he is serving prison

1 time involve his illegal possession of firearms. Notably, he was on supervised
2 release in the earlier case when he was arrested and charged with violating the
3 same federal statute. Additionally, Johnson has a lengthy criminal history that is
4 unquestionably serious. His overall criminal history spans two decades as detailed
5 in his PSR. (Dkt. 30). The Court finds there is a continuing need for protection of
6 the public and deterrence under § 3553(a)(2)(B). His health conditions do not
7 outweigh the need for him to complete his sentence. His motion for early release
8 is **DENIED**.

9 **IT IS SO ORDERED.**

10
11 Dated: February 11, 2022



Honorable Larry Alan Burns
United States District Judge